

Application No. 10/643,516

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REMARKS

Claims 1-16 are pending in the application. Claims 1-16 are rejected in the Office Action. Claims 7 and 9 are amended herein. Reconsideration and allowance of claims 1-16 is respectfully requested.

Claim Rejections – 35 USC § 102

Claims 7 and 13 are rejected in the Office action under 35 U.S.C. § 102(e) as being anticipated by Sendowski et al., U.S. Patent Application Publication No. 2003/0198934 (hereinafter Sendowski). Reconsideration and allowance of claims 7 and 13 is respectfully requested.

Applicant respectfully disagrees that the Sendowski reference anticipates Applicant's claims 7 and 13. Specifically, Applicant disagrees that Sendowski teaches the step of "(b) automatically transferring said designated questionnaire to at least one loosely networked computer."

However, assuming only for purposes of argument that Sendowski does indeed substantially show or describe the Applicants' invention, the Applicant hereby re-offers and incorporates herein, pursuant to 37 CFR 1.131, the Inventor's Declaration that is attached as Exhibit A to Applicant's Amendment and Response to Office Action Including Declaration under 37 C.F.R. Section 1.131 to Accompany Request for Continued Examination filed on September 24, 2007, which declaration establishes

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conception of the instant invention prior to Sendowski's earliest claimed priority date, coupled with due diligence from prior to Sendowski's earliest priority date through the date of filing of this application.

In addition, Applicant submits, attached hereto as Exhibit "B" a document entitled "*Bama Companies, Inc. Field Service Survey Application Technical Design*" dated August 30, 2001 (hereinafter referred to as the "Technical Design"). The Technical Design is submitted in response to a telephone interview with Examiner Tran, wherein additional evidence was requested regarding Applicant's conception of the invention set forth in the claims.

All of the steps of the method of claim 7 can be found in the Technical Design. Claim 7 is set forth below including reference to the Technical Design.

7. *A method for collecting survey data from a user comprising:*

The Technical Design, p. 3 of 19 includes a Mission Vision statement consistent with the method of the preamble.

(a) designing a questionnaire having branching logic on a first computer platform;

The Technical Design, p. 4 of 19, in a section titled "Workflow", includes "Survey Design and Preparation" that will "take place on PCs or servers." In the section titled "Question Types" the different formats of questions are identified, some, such as "yes" or "no" questions requiring branching logic.

(b) automatically transferring said designed questionnaire to at least one loosely networked computer;

The "Workflow" section on p. 4 of 19 describes the transfer of the questionnaire (survey) from the "Administrator" to the "Shopper" via "HotSync." The HotSync methods are further set forth on p. 10 of 19. HotSync methods are "loosely networked" as defined in Applicant's

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specification, paragraph 0027, in that it works in "both wired and wireless environments in batch and real-time modes" (p. 17 of 19).

(c) executing said transferred questionnaire on said loosely networked computer, thereby collecting responses from the user;

The "Workflow" section on p. 4 of 19 identifies "Complete Assigned Survey".

(d) automatically transferring via the loose network any responses so collected to a central computer; and,

The "Workflow" section identifies "Send Completed Surveys and Email" via Hot sync.

(e) making available on the Web any responses transferred to said central computer in step (d).

The Technical Design, p. 10 of 19, last paragraph, identifies that once the surveys have been uploaded, they are placed into the corporate survey answer database.

With regard to the rejection of claim 13 under § 102(b), claim 13 is set forth below with reference to the Technical Design.

13. The method of claim 7 further including tokenizing said designed questionnaire, thereby producing a plurality of tokens representing said questionnaire.

The Technical Design describes tokenizing of the designed questionnaire on p. 12 of 19 and 13 of 19.

Accordingly, the method of claims 7 and 13 is fully set forth in the Technical Design. Sendowski was published on October 23, 2003, from an application filed on March 29, 2002. However, the instant Applicant conclusively demonstrates in the Technical Design that he conceived at least as early as January 1, 2002, and that, coupled with his Declaration that he exercised due diligence from at least the date of conception

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until the instant application was filed on August 19, 2003, claiming priority from a United States Provisional patent application filed August 19, 2002. Thus, Sendowski must be removed as a reference with respect to this application.

Further, Sendowski does not claim the same subject matter as that claimed by the Applicant. Every pending claim (1-51) of the Sendowski reference requires the use of a "branch script object", whereas the claims of the instant application clearly exclude recitation of a branch script object. As a consequence, the application as-amended does not claim the same subject matter as Sendowski.

Still further, Sendowski, a pending application, published during the pendency of the instant application — i.e., Sendowski published in October of 2003, and the instant application was filed in August of 2003 claiming the benefit of August of 2002. Thus, applicants are not barred by Sendowski's published patent under 35 USC 102(b).

As a consequence, by virtue of the enclosed Declaration under Rule 1.131, Sendowski has been removed as a prior-art reference with respect to the subject matter of the instant application and rejection under 35 USC 102(e) is improper. Thus, Sendowski is traversed and claim 7, as well as claims 8 and 13 which depends therefrom, should be allowed to issue, which is respectfully requested.

Claim Rejections – 35 USC § 103

Claims 1, 5, 9, 12, and 15 - 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lew et al., U.S. Patent Application Publication No. 2004/0210472

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(hereinafter "Lew") in view of Porter, U.S. Patent Number 6,163,811 (hereinafter "Porter"). Reconsideration and allowance of claims 1, 5, 9, 12, and 15-16 is respectfully requested.

An obviousness rejection under 35 U.S.C. § 103 is evaluated by the Office in view of *Graham v. John Deere Co.*, 383 US 1 (1966). Such analysis requires: (A) the claimed invention must be considered as a whole; (B) the references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination; (C) the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and (D) reasonable expectation of success is the standard with which obviousness is determined. See MPEP 2141.

Applicant respectfully disagrees that Applicant's claims 1, 5, and 12 would be obvious to one of skill in the art in light of the Lew reference in view of the Porter reference. Specifically, Applicant disagrees that Lew teaches or suggests "tokenizing said questionnaire" as recited in claims 1, 5, and 12.

However, assuming only for purposes of argument that Lew does indeed substantially show or describe the Applicants' invention of Applicant's claim 1, the Applicant hereby re-offers and incorporates herein, pursuant to 37 CFR 1.131, the Inventor's Declaration, that is attached as Exhibit A to Applicant's Amendment and Response to Office Action Including Declaration under 37 C.F.R. Section 1.131 to Accompany Request for Continued Examination filed on September 24, 2007, which declaration establishes conception of the instant invention prior to Lew's earliest claimed

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priority date, coupled with due diligence from prior to Lew's earliest priority date through the date of filing of this application.

In addition, Applicant submits, attached hereto as Exhibit "B" a document entitled "*Bama Companies, Inc. Field Service Survey Application Technical Design*" dated August 30, 2001 (hereinafter referred to as the "Technical Design"). The Technical Design is submitted in response to a telephone interview with Examiner Tran wherein additional evidence was requested regarding Applicant's conception of the invention set forth in the claims.

All of the steps of the method of claim 1 can be found in the Technical Design. Claim 1 is set forth below including reference to the Technical Design.

1. A method for managing data including the steps of:

The Technical Design, p. 3 of 19 includes a Mission Vision statement consistent with the method of the preamble.

(a) creating a questionnaire comprising a series of questions;

The Technical Design, p. 4 of 19, in a section titled "Workflow", includes "Survey Design and Preparation" that will "take place on PCs or servers." In the section titled "Question Types" the different formats of questions are identified.

(b) tokenizing said questionnaire; thereby producing a plurality of tokens representing said questionnaire;

The Technical Design describes tokenizing of the designed questionnaire on p. 12 of 19, 13 of 19, and 14 of 19.

(c) transmitting said plurality of tokens to a remote computing device;

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The "Workflow" section on p. 4 of 19 describes the transfer of the questionnaire (survey) from the "Administrator" to the "Shopper" via "HotSync."

(d) executing at least a portion of said plurality of tokens representing said questionnaire at said remote computing device to collect a response from a user;

The "Workflow" section on p. 4 of 19 identifies "Complete Assigned Survey".

(e) transmitting at least a portion of said response from the user to a server via a network; and

The "Workflow" section on p. 4 of 19 identifies "Send Completed Surveys and Email" via Hot sync.

(f) storing said response at said server.

The Technical Design, p. 10 of 19, last paragraph, identifies that once the surveys have been uploaded, they are placed into the corporate survey answer database.

Accordingly, the method of claim 1 is fully set forth in the Technical Design. Lew was published on October 21, 2004, from an application filed on July 24, 2003, claiming priority to a Provisional application filed on July 25, 2002. However, the instant Applicant conclusively demonstrates in his Declaration and the Technical Design that he conceived at least as early as January 1, 2002, and that he exercised due diligence from at least the date of conception until the instant application was filed on August 19, 2003, claiming priority from a United States Provisional patent application filed August 19, 2002. Thus, Lew must be removed as a reference with respect to this application.

Further, Lew does not claim the same subject matter as that claimed by the Applicant. As stated previously, the claims of the Low reference do not recite

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"tokenizing said questionnaire", as recited in claims 1, 5, and 9 of the instant application.

As a consequence, the application does not claim the same subject matter as Lew.

Still further, Lew, a pending application, published during the pendency of the instant application — i.e., Lew published in October of 2004, and the instant application was filed in August of 2003 claiming the benefit of August of 2002. Thus, applicants are not barred by Lew's published patent under 35 USC 102(b).

As a consequence, by virtue of the enclosed Declaration under Rule 1.131, Lew has been removed as a prior-art reference with respect to the subject matter of the instant application and rejection under 35 USC 103(a) is improper. Thus, the rejection of claims 1. The Porter reference does not teach or suggest all of the elements of claims 2-6 and 12 as a whole as is required to sustain a rejection under 35 U.S.C. § 103. As a result, claim 1 as well as claims 2-6 and 12 which depend from claim 1 should be allowed to issue, which is respectfully requested.

With regard to claim 9, it is asserted in the Office Action, pages 9 and 10, that the Sendowski reference teaches "modifying said questionnaire with incremental changes" and references table 2 and paragraph 0058. Applicant respectfully disagrees. Sendowski does not modify the *questionnaire*. The questionnaire remains the same. Instead, the template is modified as stated by Sendowski in paragraph 58. Accordingly, the rejection is overcome. Reconsideration and allowance of claim 9 is respectfully requested.

Claims 10, 11, 15, and 16 depend from claim 9 and are allowable at least for the reasons set forth above. Reconsideration and allowance of claims 10, 11, 15, and 16 is respectfully requested.

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Respectfully submitted,

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